IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.9596 OF 2004

Dr. Avinashkumar Hambirrao Dhanawade. ...Petitioner.
Vs.
The Commissioner, Bhiwandi Nizampur
Municipal Corporation & Anr. ...Respondents.
....
Mr. P. K. Dhakephalkar with Smt. Seena Rawade for the Petitioner.
Mr.Nitin Jamdar for Respondent No.1.
Mr. A. P. Vanarse, AGP for Respondent No.2.
.....

CORAM : F.I. REBELLO, J. AND
DR.D.Y.CHANDRACHUD, J.

February 2, 2006.

P.C.

Rule. Heard forthwith.

According to the Petitioner, he was appointed in the office of Bhiwandi Nizampur City Municipal Corporation, Bhiwandi against a reserved post and after following due procedure by an order dated 17th October 2003. It appears that an approval was sought of the General Body which did not grant approval. The Petitioner was, however, continued.

In the meantime, pursuant to the enquiry, the State

Government by an order dated 8th July 2004 issued directions to the Corporation to terminate the services amongst others of the Petitioner. That decision of the Government was stayed by the Government itself on 17th July 2004. In spite of that, the Petitioner's services came to be terminated on 5th October 2004 in view of the earlier Government decision and consequently the present petition.

Various other employees moved the Labour Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 on the ground of unfair labour practice. The resolution of the Government was stayed and interim relief was granted that they shall be taken back. That order was challenged by the Corporation before this Court in Writ Petition No.571 of 2005 and other petitions which were disposed of by a Learned Single Judge of this Court. The Petition of the Corporation was rejected. Consequent thereof, those employees have been taken back in service and are now working there.

In the instant case, as noted earlier, the Respondent-Corporation terminated the services of the Petitioner based on the

directions issued by the Government on 8th July 2004. That direction itself was stayed on 17th July 2004. In other words, the Corporation has acted at least on the direction which was not in force on the date when the order of termination was issued. Consequently, the order of termination dated 5th October 2004 is set aside.

It is, however, made clear that it will always be open to the Respondent-Corporation if so advised to act according to law. It will be open to the Petitioner to make a representation to the Respondent-Corporation for consideration of his case. In so far as the regularisation or continuity of service from 5th October 2004 is concerned, we are leaving that issue open for consideration at the time when the Petitioner's case comes up for regularisation. Respondent No.2, considering that other similarly placed employees have been taken back, to reinstate the Petitioner within four weeks from today.

Rule made absolute accordingly. No order as to costs.

(F.I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)